

The Administrative Law Judge (ALJ) found claimant did not suffer any additional injuries beyond the dehydration for which he had been treated and released to return to work.

Claimant requests review of whether he met his burden of proof that his accidental injuries (back, neck and shoulders) arose out of and in the course of employment. Claimant argues that he became dehydrated at work and experienced muscle spasms, chest pain and discomfort which initially masked the extent of the injuries he had suffered. Claimant further argues that his medical expert, Dr. Pedro Murati, testified that the prevailing factor for claimant's physical complaints was the accident at work.

Respondent argues Dr. Murati did not have an accurate history of the alleged accident and the doctor further identified three separate factors that together constituted the cause of his current complaints. Consequently, respondent requests the Board affirm the ALJ's Order.

The issue on appeal from the preliminary hearing Order is whether claimant met his burden of proof to establish he suffered accidental injury to his back, neck and shoulders arising out of and in the course of his employment on September 28, 2011.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Claimant was initially hired to work on respondent's concrete crew beginning June 24, 2011, but was later transferred to the asphalt crew on August 29, 2011. On September 28, 2011, claimant was working with a crew laying asphalt which he testified required a variety of job duties including raking and shoveling asphalt, running the loader and occasionally operating a jackhammer. In the afternoon claimant began to experience cramping all over his body and he sat down. Claimant testified that he told a co-worker named John that he was cramping and hurting. He further testified that he told George Chavez, his supervisor, that he was cramping all over including his chest and legs.

Claimant agreed that he never told Mr. Chavez that he had hurt his back. Mr. Chavez tried to get claimant to drink some water but claimant was unable to drink and he was then transported to the hospital.

George Chavez, respondent's asphalt foreman, testified that claimant was working with a crew and that the work wasn't at a very fast pace. Mr. Chavez was working away from claimant when another worker approached him and said claimant wasn't feeling well. Mr. Chavez went over to where claimant was sitting. Mr. Chavez described claimant's complaints:

Q. And what was the physical complaint that he was making that prompted you to make this phone call?

A. He said he had chest pain, tightness in his chest and he said spasms. And he said his knees. His knees was shaky. And something about his chin, his chin was shaking or something.

Q. Did he make any complaint to you about a neck injury?

A. No.

Q. Did he make any complaint about shoulder injuries?

A. No.

Q. Did he make any complaint to you about low back injury?

A. No.

Q. Did he make any complaint about pains running down his legs?

A. No.<sup>1</sup>

And claimant agreed that he could not point to any work activity that he had performed on September 28, 2011, that led to an immediate onset of pain.

Upon admission at the hospital, claimant's chief complaint was chest pain and diffuse muscle cramps. The claimant denied any history of trauma. An EKG ruled out heart problems and it was determined claimant was dehydrated. Claimant was kept overnight and hydrated with complete resolution of his chest pain but he had some pain in his lower back which was indicated to most likely be attributed to his extensive dehydration.<sup>2</sup> Claimant was released to return back to work.

Claimant did not return to work for respondent after September 28, 2011. At the request of claimant's attorney, Dr. Pedro Murati examined claimant on January 23, 2012. Claimant provided a history that after using a jack hammer, raking asphalt and running a front loader he noticed low back and neck pain that was radiating to both of his shoulders and he had severe cramps all over his body. Dr. Murati concluded that the prevailing factor in the development of claimant's conditions is the accident at work, his preexisting back injury and lack of appropriate treatment.

After reviewing all the evidence the ALJ ruled:

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<sup>1</sup> P.H. Trans. at 36.

<sup>2</sup> P.H. Trans., Resp. Ex. 1.

The Record contains no evidence that the Claimant injured his neck, back, and shoulders on September 28, 2011, while working for the Respondent. He suffered from extensive dehydration and was taken to an emergency room. The Claimant was evaluated as stable and all of this was secondary to dehydration. (Respondent's exhibit #1)

This Court finds that the Claimant has not sustained his burden of proving he injured his back, neck and shoulders while working for the Respondent on September 28, 2011.<sup>3</sup>

This Board Member agrees and affirms. The claimant complained of chest pain and muscle cramping. And he agreed that he never complained to his supervisor of an onset of back, shoulder or neck pain nor do the contemporaneous records indicate any such complaints. And claimant denied he suffered any trauma. The history provided to Dr. Murati differs from the contemporaneous medical records and as noted, from claimant's testimony that he never experienced nor told anyone about an onset of back, shoulder or neck pain at work on September 28, 2011.

Moreover, claimant testified that he did not have any problems with tingling sensation in his back, shoulder pain, neck pain, uncontrolled urination and erectile dysfunction before September 28, 2011. He further intimated he was not receiving any medical treatment for his back or neck before September 28, 2011. It should be noted that claimant had a work-related injury to his back in 2009 and had received ratings and restrictions from Dr. Murati for that injury but claimant testified that he had been released without restrictions. And it appears claimant was taking medication for his neck, back and erectile dysfunction before the alleged work-related injuries. Claimant testified:

Q. Looks like you were also on Skelaxin, which is a muscle relaxant. Do you recall being on that medication?

A. Yes.

Q. Why were you on that?

A. I think it was just to get the tension, you know, get my muscles to relax in my -- up in my neck area and back area. I think, if I'm -- my memory serves me right, I think I got that medicine prior to the injury, and I think the doctor at Hunter Health Clinic prescribed that, I think.<sup>4</sup>

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<sup>3</sup> ALJ Order (Feb. 28, 2012).

<sup>4</sup> West Depo. at 12-13.

Moreover, the Hunter Health Clinic notes of November 23, 2010, indicate that claimant was having problems with impotence and was prescribed Viagra.<sup>5</sup>

In summary, claimant suffered dehydration and cramping at work on September 28, 2011, and he was treated then discharged to return to work. There is no persuasive evidence that the onset of neck, shoulder and back complaints were related to that incident.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>6</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>7</sup>

**WHEREFORE**, it is the finding of this Board Member that the Order of Administrative Law Judge John D. Clark dated February 28, 2012, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of May, 2012.

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HONORABLE DAVID A. SHUFELT  
BOARD MEMBER

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John D. Clark, Administrative Law Judge

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<sup>5</sup> P.H. Trans., Resp. Ex. 2.

<sup>6</sup> K.S.A. 44-534a.

<sup>7</sup> K.S.A. 44-555c(k).